

## **PUBLIC ACCESS TO BUDGET HEARINGS**

### **General Rules**

It is the purpose of the Indiana Open Door Law (“ODL”) to ensure “the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed.” (*I.C. § 5-14-1.5-1*)

### **Political Subdivisions**

The political subdivision or appropriate fiscal body, if the political subdivision is subject to IC 6-1.1-17-20 (binding adoption), must upload the following information to Gateway (as maintained by the Department of Local Government Finance [“Department”]):

- (1) The estimated budget.
- (2) The estimated maximum permissible levy, as provided by the Department under IC 6-1.1-18.5-24.
- (3) The current and proposed tax levies of each fund.
- (4) The amount by which the political subdivision’s distribution of property taxes may be reduced by credits granted under IC 6-1.1-20.6, as estimated by the Department under IC 6-1.1-20.6-11.
- (5) The amounts of excessive levy appeals to be requested.
- (6) The time and place at which the political subdivision or appropriate fiscal body will hold a public hearing on the items described in subdivisions (1) through (5). (*See I.C. § 6-1.1-17-3(a)*)

A political subdivision is “a county, township, city, town, separate municipal corporation, special taxing district, or school corporation.” (*I.C. § 6-1.1-1-12*)

Again, the budget notice (also known as the Form 3) must include the “time and place at which the political subdivision or appropriate fiscal body will hold a public hearing” on the budget. (*See I.C. § 6-1.1-17-3(a)*) The Form 3 also includes the time, place, and location of the meeting at which the unit’s budgets, rates, and levies will be adopted.

☐ Indiana courts have held that a political subdivision must allow any taxpayer to speak at budget hearings required under *I.C. § 6-1.1-17-3*. *Brademas v. South Bend Cmty. Sch. Corp.*, 783 N.E.2d 745, 750 (Ind. Ct. App. 2003) (citing *State Bd. Of Tax Comm’rs v. State ex rel. City of Indianapolis*, 198 Ind. 343, 353, 153 N.E. 404, 407 (1926)).

☐ NOTE: The ODL generally does not require an opportunity for public comment at a meeting, but other statutes require public hearings. (*See Opinion of the Public Access Counselor 08-FC-149*)

The Form 3 must be submitted through Gateway at least 10 days before the unit’s public hearing (an amended Form 3 must likewise be posted at least 10 days before the hearing). There is no longer any statutory obligation to publish the Form 3 in newspapers (please note that school corporations must still publish newspaper ads concerning their bus replacement fund plan and capital projects fund plan adoption). (*See I.C. § 6-1.1-17-3(a)*) **Units must also comply with standard Open Door Law notice requirements, such as posting notice at the meeting place at least 48 hours before the hearing and meeting.**

The public hearing required by *I.C. § 6-1.1-17-3* must be completed at least ten days prior to the date when the officers of a political subdivision convene “to fix the budget, tax rate, and tax levy,” unless the subdivision is a consolidated city and county or a second class city. “In a consolidated city and county and in a second class city, that public hearing . . . may be held at any time after introduction

of the budget.” (See I.C. § 6-1.1-17-5(a)) Ten (10) or more taxpayers may object to a budget, tax rate, or tax levy of a political subdivision by filing an objection petition with the proper officers of the political subdivision not more than seven (7) days after the hearing. The objection petition must specifically identify the provisions of the budget, tax rate, and tax levy to which the taxpayers object. If such a petition is filed, the fiscal body of the political subdivision must adopt with its budget a finding concerning the objections in the petition and any testimony presented at the adoption hearing. (See I.C. § 6-1.1-17-5(b)-(c))

Fiscal bodies may occasionally find they need to change the date of their budget hearing or adoption meeting due to unforeseen circumstances.

A change to the adoption **hearing** date, time, or location will require the unit to submit to Gateway a new Form 3 at least 10 days before the new hearing.

Changes to the budget adoption **meeting** date, time, or location need to be made in the Form 3 as well. The unit will need to contact the Gateway administrator to open the system to make the date change and resubmit the notice. There is a Notes field on the Form 3 that should be used to indicate the meeting date has changed. This change should be done as soon as possible and it must be made at least 48 hours in advance of the meeting.

There will be situations when a fiscal body assembles for the budget hearing or adoption meeting and discovers they do not have a quorum. In this situation, the hearing or meeting should be *postponed* to a new day and time that is properly announced at the originally advertised hearing or meeting time. The Form 3 will have to be reposted or amended, as applicable and as described above.

To be clear, if no quorum shows up to the hearing or meeting, the hearing or meeting cannot be *continued* – it can be *postponed*. A quorum is required to continue a hearing or meeting. If a quorum of the fiscal body gathers for the adoption **meeting** but then determines that the vote on the budget adoption needs to be held on a different day, the fiscal body can continue the adoption meeting. The original adoption meeting should not be adjourned. Rather, the minutes should reflect that the meeting has been continued. The date and time of the continued meeting must be announced at the original adoption meeting. This information must be documented in the minutes of the original adoption meeting. No changes are needed to the Form 3 in the case of the adoption meeting being properly continued.

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## **County Auditors**

On or before August 1 of each year, each county auditor must submit to Gateway a certified statement of the assessed value for the ensuing year. *(See I.C. § 6-1.1-17-1(a))* Under certain circumstances, a county auditor may have to conduct a public hearing before modifying the assessed value certification. *(See I.C. § 6-1.1-17-1(c)-(e))* A public hearing is not required if the modification is related to a mathematical error, if the modification adds assessed valuation based on previously omitted property, or if modification would not increase any tax rates. *(See I.C. § 6-1.1-17-1(e))* Immediately upon the receipt of the tax duplicate, the county auditor must give notice of the rate of tax per one hundred dollars (\$100) of assessed valuation to be collected in the county for each purpose and the total of the rates in each taxing district. This notice must be published in the form prescribed by the Department three (3) times with each publication one (1) week apart.

The notice must be printed in two (2) newspapers which represent different political parties and which are published in the county. However, if two (2) newspapers which represent different political parties are not published in the county, the notice must be printed in one (1) newspaper. *(See I.C. § 6-1.1-22-4)*

## **Additional Appropriations/Transfer of Funds**

Before the officials of a political subdivision can authorize the spending of more money than the amount in a certified budget, there must be notice and a public hearing. *(See I.C. § 6-1.1-18-5(a))*

☐ The notice must “state the time and place at which a public hearing will be held on the proposal.” *(I.C. § 6-1.1-18-5(a))*

☐ The notice must be published once, no less than ten days prior to the hearing. *(See I.C. § 5-3-1-2(b))*

“Proper officers of a political subdivision may transfer money from one major budget classification to another within a department or office.” The officers do not need to give notice or an opportunity for public comment, but they must make the decision at a public meeting. *(See I.C. § 6-1.1-18-6)*

For more information about the public access laws, visit <http://www.in.gov/pac/>

For more information about the budget process, contact the Department of Local Government Finance’s Budget Division. Contact information is available at <http://www.in.gov/dlgf/2338.htm>.